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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/787,201	02/27/2004	Craig Allan Dunk	30889-2004	4692
63817	7590	07/05/2007		
MATTHEW WEISS 511 SAN FELICIA WAY LOS ALTOS, CA 94022			EXAMINER HAILU, KIBROM T	
			ART UNIT 2616	PAPER NUMBER
			MAIL DATE 07/05/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/787,201	<b>Applicant(s)</b> DUNK, CRAIG ALLAN	
	<b>Examiner</b> Kibrom T. Hailu	<b>Art Unit</b> 2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 February 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some    \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1, 6, 10 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 10 and 16 are recite the limitation "said packets" in lines 5, 4 and 22, respectively. There is insufficient antecedent basis for this limitation in the claims. Appropriate correction is required.

Claim 6 depends on itself. It is assumed that it is intended to depend on claim 5.

### *Claim Rejections - 35 USC § 102*

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Ruutu et al. (US 2004/0260750 A1).

**Regarding claim 1**, Ruutu discloses a method comprising the step of: determining a first quality of a link (paragraph [0005], lines 1-3) between an electronic device and a node (paragraphs [0028] and [0029]) by examining a first layer of a protocol stack (paragraph [0008], lines 6-7) used to implement said link that is different from a second layer of said protocol stack that is used to deliver said packets (paragraph [0062], lines 3-7, 17-18; [0065], lines 3-8; [0037], lines 9-14; [0042]; [0023], lines 1-3; [0022]; claim 16, 1, 6, 14, 19 ..., explain the QoS module

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132 of the mobile phone device determines the quality of each of the network protocols or the layers to reliably deliver packets. The user or the user's device chooses the protocol with the best QoS).

**Regarding claim 2**, Ruutu discloses comprising the step of adjusting the delivery of said packets according to said determined quality (paragraph [0062], lines 5-7, 17-18).

**Regarding claim 3**, Ruutu discloses said first layer is layer four of the OSI model and said second layer is layer two of the OSI model (Fig. 2; paragraph [0008], lines 6-7; [0042]; claims 1, 6, 14, 19, ....)

**Claim 4** is the same as claim 1 except there are now two links comprising the layers or protocols. Ruutu discloses plurality of links such as links via landline network(s) 104 and wireless network(s) 114 (Fig. 1; paragraph [0028]; [0030]; claim 23). Ruutu further discloses protocols or layers, which have different QoS, with in each of these links (paragraph [0027])

**Regarding claim 5**, Ruutu discloses at least one of said first quality and second quality is based on at least one of the measurements of reachability and availability of a given service used for delivery of said packets (paragraph [0009], lines 1-4; [0021], lines 1-10; [0039], lines 8-10; [0058], lines 1-3; [0060], lines 6-8...).

**Regarding claim 6**, Ruutu doesn't explicitly disclose said service includes Voice over IP. However, VoIP is a well-known service.

**Regarding claim 7**, Ruutu further discloses comprising the step of delivering said packets over the one of said two links based on a determination of which link has a more desirable quality (paragraph [0044], lines 13-17; [0065], lines 3-10; claim 16, 25).

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**Regarding claim 8**, Ruutu further discloses said determination is based, at least in part, on which link has the least financial cost for carrying said packets (paragraph [0041], lines 5-7; [0044], lines 9-17; [0054], lines 8-10; [0060], lines 6-8).

**Regarding claim 9**, Ruutu discloses said determination is based, at least in part, on whether a change from one of said links to the other of said links will be transparent to the performance of a given service being used for delivery of said packets (paragraph [0030], lines 6-8; [0037], lines 9-14).

**Regarding claims 10-16**, the claimed limitations do not add any new features. They only include the features corresponding to the subject matter mentioned above in the rejected claims 1 to 9. Therefore the same rejections apply hereto.

#### *Conclusion*

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kibrom T. Hailu whose telephone number is (571)270-1209. The examiner can normally be reached on Monday-Thursday 8:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Q. Ngo can be reached on (571)272-3139. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Kibrom Hailu

RH

06/27/07

  
RICKY Q. NGO  
SUPERVISORY PATENT EXAMINER